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81-2176

No.

IN THE SUPREME COURT OF THE
UNITED STATES

1982 Term

People of the State of
Michigan on relation of
William L. Fisher

-v-

Robert C. Anderson,
Respondent

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On appeal from the
Michigan Supreme Court

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# JURISDICTIONAL STATEMENT

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Is the "age discrimination clause" which has been applied to co-relator Beer in the instant case really applicable to him and, if so, is it constitutional?

People say "NO" to both parts of this question.

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## JURISDICTIONAL STATEMENT

Now come People and submit the following as and for their jurisdictional statement in compliance with the Rules of the U.S. Supreme Court.

The question presented by this appeal is as follows:

Is the "age discrimination clause" which has been applied to co-relator Beer in the instant case really applicable to him and, if so, is it constitutional?

People say "NO" to both parts of this question.

The caption of the case contains the names of all parties thereto except co-relator William John Beer who was made a party by due service of process of pleadings and briefs in the original action in the Michigan Court of Appeals and of pleadings and briefs in the

Michigan Supreme Court.

The lower courts issued orders (not published) but no opinions.

A concise statement of the grounds on which the jurisdiction of this Court is invoked is as follows:

People of the State of Michigan bring this quo-warranto action against respondent for, inter alia, judgment of usurpation of the office of Oakland County Circuit Judge including ouster therefrom for holding same without warrant in law.

Co-relator Beer has a solemn federal duty imposed upon him by the federal constitution (Clause 3, Art. VI thereof), to wit: to uphold same in the discharge of his official duties as Circuit Judge for the County of Oakland, State of Michigan. Respondent Anderson usurps said office and interferes with said duties without warrant in law.

Co-relator Beer asked, to no avail, the Michigan Court of Appeals, to restore to him said office for the reason, inter alia, that he has been deprived of same without due process of law in violation of the 14th Amendment and has been illegally prevented from performing said solemn federal duty enjoined upon him by said glorious instrument.

The date of entry of the judgment sought to be reviewed is February 5, 1982 and the date the notice of appeal was mailed to the Michigan Supreme Court was May 2, 1982.

The statutory provision conferring jurisdiction of the appeal on this court is 28 USC 1257.

The cases believed to sustain jurisdiction are the following, inter alia: Marbury v Madison; Chandler v Judicial

Council; Murgia; Vance; and Malmed.

Marbury v Madison and Chandler v Judicial Council both involved a federal judicial office; the former laid down the affirmation of the ancient legal principle that a de jure title holder has a vested property right in a public office; the latter admitted, without saying so, that a fundamental right (not less than a property right protected by the federal constitution) was being decided. Said admission is by necessary implication since the dissent thought that Judge Chandler had been deprived of his office in violation of the federal constitution while the majority thought not.

The majority in Murgia and Vance decided a right to a mere employment, terminable at will, as though it were a property right without saying so; it said what it was not, to wit: "a fundamental

right". (Consonant with justice this same court which treated Murgia and Vance on their merits cannot refuse to decide the case sub judice in which not only a property right has been taken without due process but a federal duty has been interfered with without warrant in law).

Malmed had to distinguish the majority opinions of Murgia and Vance on the basis that the issue of due process was not addressed and proceeded to protect the incumbent of a state judicial office in accordance with the correct legal principle that no less than a property right is involved in the exercise and peaceful enjoyment of said office. This highest Court should leave no stone unturned to be not outdone by Malmed in protecting co-relator Beer in view of the unassailable dint of the reasoning therein.

The constitutional (and implementing statutory) provision the case involves is to the following effect:

> "No person shall be elected or appointed to a judicial office after reaching the age of 70 years." Constitution of the State of Michigan of 1963, Art. VI, Sec. 19.

A concise statement of the case containing the facts material to consideration of the question presented is as follows: On or about January 23, 1981 the People of the State of Michigan on relation of William L. Fisher commenced an original action in quo-warranto by and for the People in the Michigan Court of Appeals showing, inter alia, as follows:

Relator is an interested citizen of Michigan and of the United States of America and a resident of Oakland County. On or about January 16, 198 relator made application to Attorney General

Frank J. Kelley to bring an action in quo warranto against Robert C. Anderson who usurps the office of Oakland County Circuit Judge by his pretended election to an alleged vacancy and, without warrant in law, holds the same against the de jure claim of William J. Beer who has not vacated, resigned or been removed from said office.

Attorney General Frank J. Kelley declined to bring said action on January 23, 1981.

Relator sought leave in the Court of Appeals to bring the action in view of the declination made to relator of said Attorney General Frank J. Kelley.

Co-relator Be[illegible] was Oakland County Circuit Judge since 1958 and now holds over from his last term in office which expired January 1, 1981.

Sometime in 1980 respondent Anderson assumed the risk of pretending to succeed co-relator Beer in said office knowing

that there was no vacancy therein and took it upon himself to become a candidate in the August 1980 primary election knowing also that co-relator Beer's exclusion therefrom was wrongful.

Respondent Anderson pretended to become elected to said office in the ensuing November 1980 general election and pretended to become qualified therefor and pretended to assume said office on January 1, 1981; said Anderson never defeated incumbent Beer in said election or in any other election. Respondent Anderson wrongfully holds said office de facto without warrant in law and against the good and valid de jure claim of co-relator Beer.

On April 28, 1981 the Michigan Court of Appeals denied leave to bring said action and on June 4, 1981 denied rehearing of its said order.

On February 5, 1982 the Michigan Supreme Court denied leave to appeal from the April 28, 1981 order of the Michigan Court of Appeals.

The stage in the proceedings at which the question sought to be reviewed was raised was the very first stage in the court of first instance, to wit: in said original complaint in the Michigan Court of Appeals and was the very first stage in the appellate court, to wit: in People's application for leave to appeal in the Michigan Supreme Court.

The manner of raising said question was by asserting same in said original complaint and arguing same in the supporting brief (likewise for application for leave to appeal and supporting brief). The assertion in said original complaint was as follows:

Said board (state board of election

canvassers) acted improperly by mistakenly applying the last sectence of Section 19 (herein "age discrimination clause") of Art. VI of the 1963 Michigan Constitution to co-relator Beer whereas the same has no application to him whatsoever.

Even if applicable, said "age discrimination clause" and any statute in implementation thereof are invidiously discriminatory against co-relator Beer and unconstitutionally violative of his precious rights and solemn duties under both the federal and state constitutions including, in respect to the former, Clause 3 Article VI and the 14th Amendment thereof and, in respect to the latter, Article I, Sections 1, 2 and 17 and Article VI, Sections 13 and 22 thereof.

Both courts refused to give co-relator Beer his "day in court" in that the court of first instance denied him

leave to file his quo-warranto complaint and the appellate court denied him leave to appeal.

A Michigan Circuit Judge who is required under Clause 3, Art. VI of the federal constitution to carry out a federal duty, to wit: uphold and defend the federal constitution, has been illegally barred from the performance of said duty, to wit: he has been deprived of his office without due process of law.

A statement of the reasons, inter alia, why the question presented is so substantial as to require plenary consideration with briefs on the merits and oral argument for its resolution is as follows:

Respectfully, the decisions of the United States Supreme Court, are mutually conflicting and confusing in respect to the question of whether a public office

is property within the meaning of the 14th Amendment of the federal constitution.

If, in the course of its decisions over the years, the United States Supreme Court had held fast to traditional legal principles its hortations on the question could have been limpid expositions as witness that in Marbury v Madison 1 Cranch 137. Chief Justice Marshall speaking for a unanimous court emphatically affirmed the unerring ancient legal principle that a public office is indeed property (and far more than that) and that to withhold same from the de jure title holder is "an act deemed violative of a vested legal right".

The highest courts of the several states so teach without exception as conclusively testified to by their continued use of the venerable and ancient writ of quo-warranto; otherwise, the latter would have no meaning or

purpose. On the other hand, the very essence of quo-warranto is to test the legal title to the most important and sacred property known to the law of the land, to wit: a public office.

Witness the following expounders of this legal principle from the fathers of the law as handed down to us by an unbroken line of legal precedents from statehood of the very state from whence the case sub judice arises:

A public office, as distinct from a mere employment, embraces the idea of tenure, duration, emolument and duties. It is where, for the time being, a portion of the sovereignity attaches to be exercised for the public good. Underwood v McDuffee 15 Mich 361; Throop v Langdon 40 Mich 673; Streeter v Paton 7 Mich 341. A public officer, unlike a mere employee, has a property right in his office of which he cannot be deprived except by

due process of law. An unbroken line of authorities since statehood so far establishes our constitutional polity toward an incumbent judge and the tenure accorded him in the enjoyment of his office as to militate against any forced retirement. Slaughter v People 2 Doug (Mich) 334; Chandler v Nash 5 Mich 409; Waldby v Callendar 8 Mich 430; People v Wayne County Board of Auditors 13 Mich 233; People v Hurlbut 24 Mich 44; Shurburn v Hooper 40 Mich 503; Douvielle v Manistee Supervisors 40 Mich 585; Allor v Wayne County Auditors 43 Mich 76; Matter of Headnotes 43 Mich 641; Gratopp v VanEps 113 Mich 590; Nichols v Judge of Superior Court 130 Mich 187; Dunham v Tilma 191 Mich 688; Sharp v Farrell 243 Mich 246; Holland v Adams 269 Mich 372.

It appears that the case at bar is one of first impression in this court as relator was unable to find a single

case in the history of this court where a quo-warranto action involving a state judicial office has been appealed thereto! In the case sub judice the People had challenged said age discrimination clause (Art. VI, Sec. 19 of the Michigan Constitution and implementing statute) on the ground of its being repugnant to the Constitution of the United States and the decision of the lower courts is, in legal effect, in favor of its validity.

A lower federal court (Malmed) properly acted to protect the legal rights of an incumbent state court judge before he was actually deprived of his office. Said court, however, had to distinguish the majority opinions in Murgia and Vance . These reached this court and were treated on their merits though they did not involve, as does the case at bar, a "fundamental right" but rather a mere employment, terminable at will.

A fortiorari, should the instant case be decided by this court on its merits since it involves not only a property right protected by the 14th Amendment but an office expressly "touched" by the federal constitution (Clause 3, Art. VI).

The judge in the Malmed case obviously had wished the perspicacious observation of Justice Marshall had carried the day in Murgia; his (Marshall's) words (paraphrased) were particularly apt in the Murgia case; likewise in the instant case, to wit:

> "To force retire an able judge during his good behavior is irrational". (emphasis supplied)

What is "irrational" is ipso facto unconstitutional and hence where, as in the case at bar, a state judicial public office is usurped as a consequence of an "irrational" provision in a state constitution (and implementing statute) the de jure title holder thereof, as an

absolute minimum, has been deprived of property (and much more) without due process of law in violation of the 14th Amendment and has been impeded in the performance of duties expressly enjoined upon him by Clause 3, Art. VI. In fact, the "irrational" acts in furtherance of the "irrational" provision are deemed quasi-criminal in nature which is why the instant action is prosecuted in the name of the People of the State of Michigan. (assuming, arguendo, said clause is even applicable--unlike Malmed it is not)

Wherefore, People have a federal statutory right of appeal ( Sec. 1257) which nobody can deny. This court's unrelenting commitment to do justice demands,as a minimum, reversal, if only for a decision on the merits by the lower court of the question presented for review.

Respectfully submitted,

William L. Fisher, Esq.
Attorney at Law; Relator in pro per

Appendix - Item I

COURT OF APPEALS OF THE STATE OF MICHIGAN

At a session etc.

Present Hon. Walsh, Burns, and Holbrook.

No. 55826

ORDER

In this cause an application for leave to bring an action in the nature of quo warranto, pursuant to GCR 1963, 715.2(4) and 715.1(1), is filed by plaintiff, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented. Defendant may recover costs pursuant to GCR 1963 822.

Order entered April 28, 1981.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 28th day of April in the year of our Lord, 1981.

Ronald L. Dzierbicki, Clerk

## Appendix - Item II

COURT OF APPEALS OF THE STATE OF MICHIGAN

At a session, etc.

Present Hon. Walsh, Burns, and Holbrook.

No. 55826

ORDER

In this cause an application for rehearing is filed by plaintiff, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED.

Order entered June 4, 1981.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals to the order entered in said court in said cause at Lansing, this 4th day of June, in the year of our Lord, 1981.

Ronald L. Dzierbicki, Clerk

Appendix - Item III

SUPREME COURT OF MICHIGAN

At a session, etc.

Present Hon. Coleman
Kavanagh
Williams
Levin
Fitzgerald
Ryan
Moody

No. 67402

ORDER

On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court.

Order entered February 5, 1982.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 5th day of February, in the year of our Lord, 1982.

Corbin R. Davis, Deputy Clerk

Appendix - Item IV

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN on relation of WILLIAM L. FISHER,

No. 67402

-v-

ROBERT C. ANDERSON,
Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM A FINAL ORDER OF THE MICHIGAN SUPREME COURT

People of the State of Michigan hereby appeal to the Supreme Court of the United States from the final order denying leave to appeal entered in this action on the 5th day of February, A.D. 1982.

Respectfully submitted,

WILLIAM L. FISHER, ESQ.
Attorney at Law
Relator in pro per
1051 Naughton St. #202
Troy, Michigan 48084

DATED: This 2nd day of May, A.D. 1982.